

State Water Resources Control Board

September 30, 2011

Ms. Terry Macaulay
Deputy Executive Officer
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

Dear Ms. Macaulay:

COMMENTS ON FIFTH STAFF DRAFT DELTA PLAN

State Water Resources Control Board (State Water Board), Central Valley Regional Water Quality Control Board (Central Valley Water Board), and San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) (collectively Water Boards) staff has reviewed the Fifth staff draft Delta Plan (Plan) and have comments and suggestions regarding issues that involve State Water Board authorities and actions. As specified below the Water Boards would need additional resources or would need to shift priorities and resources to implement many of the listed actions. The Plan should acknowledge that implementing these actions could require diverting resources from other priority work. Our comments are presented by chapter, and refer to the Plan's recommendations and policies (e.g. WR R1 and ER P1). Suggested changes to the draft Plan are provided in underline and strikeout.

Chapter 1: The Delta Plan

Table 1-1 (P. 22)

Agencies with Responsibilities in the Delta

Comment: State Water Board staff recommends that Table 1-1, regarding the State Water Board's responsibilities in the Delta, be modified as follows to make clear that the State Water Board must consider the competing uses for water:

Required to develop and adopt water quality objectives, including flow objectives, to ensure reasonable protection of beneficial uses. ~~criteria describing the flows deemed necessary to maintain water quality standards and protect public trust resources in the Delta.~~ Enforce water rights and ensure proper allocation/ diversion of water in and out of Delta.

Current Conditions: Today's Delta

The draft Plan states: "Since 1914, the State Water Resources Control Board (SWRCB) has issued permits to post-1914 appropriative water diverters in the Delta, but actual annual diversion amounts are not currently known." (P. 24, lines 27-29)

Comment: Thank you for updating the current draft Plan to address staff comments on the fourth draft. State Water Board staff has no further comments on this statement.

Chapter 4: A More Reliable Water Supply for California**Reduce Reliance on the Delta through Improved Regional Water Self-Reliance**

WR R3: This recommendation states, in part, that the SWRCB and other agencies, in consultation with the Council, should revise State grant and loan ranking criteria by December 31, 2012, to provide a priority for water suppliers that include a Water Reliability Element in their adopted Urban Water Management Plans, Agricultural Water Management Plans, and/or Integrated Regional Water Management Plans... (P. 84, lines 16-25)

Comment: As mentioned in staff comments on the fourth draft Plan, many grant, and loan programs administered by the Water Boards primarily address pollution control and do not have a direct connection with water supply reliability. Making a connection between pollution control and water supply efficiency could create counter-productive complications for some of these funding programs. State Water Board staff therefore recommends that the Plan's language be modified as follows:

The California Department of Water Resources, the State Water Resources Control Board, the California Department of Public Health, and other agencies, in consultation with the Council, should revise, where appropriate, State grant and loan ranking criteria by December 31, 2012...

Furthermore, Department of Water Resources (DWR) already reviews urban water management plans to ensure that the plans contain all of the required elements. DWR also makes a determination of compliance with demand management measures required in the plans as a condition for funding. DWR staff are experienced and knowledgeable in conducting these reviews and could provide a more efficient and effective review process than staff in other agencies that do not have the expertise in evaluating the substance of the projects proposed for funding. Therefore, State Water Board staff recommends that adequate Water Reliability Elements should be required as a condition of application and the determination of adequacy should be made by DWR.

WR R5: This recommendation states: "The State Water Resources Control Board and/or the Department of Water Resources should require that proponents requesting a new point of diversion, place of use, or purpose of use that results in new or increased use of water from the Delta watershed should demonstrate that the project proponents have evaluated and implemented all other feasible water supply alternatives." (P. 84, lines 34-37)

Comment: While the State Water Board may have authority as a lead agency under CEQA to evaluate such alternatives, or to deny or condition an application or petition based on its public interest authority, this provision goes a bit further. The State Water Board does not have the authority to require a project proponent to implement all other feasible water supply alternatives.

The draft Plan states: "The current flow requirements established by the SWRCB in D1641 remain in effect until the SWRCB formally adopts and implements revised flow objectives." (P. 85, fn. 27)

Comment: The reference to D1641 should be to the Bay-Delta Plan, which established the flow requirements. Therefore, State Water Board staff recommends the following modification:

The current flow requirements established by the SWRCB in ~~D1641~~ and contained in the 2006 Bay-Delta Water Quality Control Plan remain in effect until the SWRCB formally adopts and implements revised flow objectives.

Update Delta Flow Requirements

ER P1: This policy states: "Development, implementation, and enforcement of new and updated flow requirements for the Delta and high-priority tributaries are key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan objectives and establish flows as follows:

- a) By June 2, 2014, adopt and implement updated flow objectives for the Delta that are necessary to achieve the coequal goals.
- b) By June 2, 2018, develop flow criteria for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.

Prior to the establishment of revised flow objectives and criteria identified above, the existing Bay-Delta Water Quality Control Plan objectives shall be used to determine consistency with the Delta Plan.

By June 30, 2013, the Delta Stewardship Council will request an update from the State Water Resources Control Board on items ER P1 (a) and (b). If the State Water Board indicates the items (a) or (b) cannot be met by the dates provided, the Delta Stewardship Council will consider and may amend the Delta Plan to achieve progress on the coequal goals in place of the updated flow requirements. For example, the Delta Stewardship Council could:

1. Determine that a covered action that would increase the capacity of any water system to store, divert, move, or export water from or through the Delta would not be consistent with the Delta Plan until the revised flow objectives are implemented.
2. Recommend that the State Water Resources Control Board cease issuing water rights permits in the Delta and the Delta watershed (or, if the absence of flow criteria is specific to one or more of the major tributaries, then the recommendation could be focused on the impacted areas)."

Comment related to a): As mentioned in staff comments on the fourth draft Plan, in order to adopt *and* implement flow objectives for the Delta, and not just the San Joaquin River, by June 2014, the State Water Board would need additional resources or would need to shift priorities and resources in the State Water Board's Division of Water Rights. The Plan should acknowledge that if additional resources are not made available, then it may not be possible for the State Water Board to complete the planning and implementation work by the above deadlines. The Plan should also acknowledge that in order to both adopt and implement updated flow objectives for the Delta, the State Water Board would need to conduct combined planning and water right implementation proceedings, which may be more complex and controversial than sequential proceedings.

Comment related to b): As mentioned in staff comments on the second draft Plan, flow “criteria” have no regulatory effect. Because additional time and resources would be needed to develop and implement flow objectives, as opposed to simply developing flow criteria, the Plan should make the intent of the policy clear. The following parts of the Plan that refer to requirements, criteria, or objectives (shown in bold), should be reviewed for consistency with the policy regarding Delta watershed tributary flows:

- **Table 1-1, Agencies with Responsibilities in the Delta**

The draft Plan states, in part, that the State Water Resources Control Board is:
“Required to develop and adopt **criteria** describing the flows...” (P. 22)

- **Administrative Performance Measures**

The draft Plan states: “Adoption and implementation by SWRCB of Bay-Delta Water Quality Control Plan flow **objectives** by June 2, 2014, and development of flow **criteria** for the major tributary streams in the Delta watershed by June 2, 2018.”
(P. 97, lines 15-17)

- **Update Delta Flow Requirements** (P. 84, line 38)

The draft Plan states: “In order to achieve the coequal goals, it is essential that the SWRCB complete the work to develop, implement, and enforce new updated flow **requirements** for the Delta and the major tributary streams in the Delta watershed.”
(P. 85, lines 9-11)

- **Creating a More Natural Flow Regime**

ER P1: This policy states: “Development, implementation and enforcement of new and updated flow **requirements** for the Delta and high priority tributaries is key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan **objectives** and establish flows as follows: (P. 113, lines 2-9)

a) By June 2, 2014, adopt and implement updated flow **objectives** for the Delta that are necessary to achieve the coequal goals.

b) By June 2, 2018, develop flow **criteria** for high-priority tributaries in the Delta watershed that are necessary to achieve the coequal goals.”

The draft Plan goes on to state, in part: “Prior to the establishment of revised flow **objectives criteria** identified above...” (P. 113, lines 10-12)

- **Administrative Performance Measures**

The draft Plan states: “The SWRCB adopts and implements Delta flow objectives by June 2, 2014 and adopts flow **criteria** for the major tributary rivers to the Delta by June 2, 2018.” (P. 126, lines 36-37)

- **Salinity**

ER P1: This policy states, in part: "Development, implementation, and enforcement of new and updated flow **requirements** for the Delta and high-priority tributaries are key to the achievement of the coequal goals. The State Water Resources Control Board should update the Bay-Delta Water Quality Control Plan **objectives** and establish flows as follows: (P. 138, lines 41-44; P. 139, lines 1-4)

a) By June 2, 2014, adopt and implement updated flow **objectives** for the Delta...

b) By June 2, 2018, develop flow **criteria** for high-priority tributaries in the Delta..."

The draft Plan goes on to state, in part: "Prior to the establishment of revised flow **objectives criteria** identified above..." (P. 139, lines 5-7)

- **Administrative Performance Measures**

The draft Plan states: "The SWRCB adopts and implements Delta flow **objectives** by June 2, 2014. " (P. 149, line 41)

State Water Board staff's April 15, 2011 comment letter on the second draft Plan presented a list of high priority tributaries in the Delta watershed that are necessary to achieve the Coequal Goals. Thank you for acknowledging that this list is for illustrative purposes only (P. 86, fn. 29). Staff recommends adding to this footnote that the list of high priority tributaries could change as more information becomes available. Per staff comments on the fourth draft Plan, development and implementation of flow objectives for high priority tributaries to the Delta would require significantly more resources than simply developing flow criteria. The Plan should acknowledge this resource need if the Council determines that the intent of the policy in the Delta Plan is for the State Water Board to develop and implement flow objectives. The Plan should also acknowledge that it may not be possible for the State Water Board to complete the flow objective-setting work without additional or redirected resources.

Expand Water Storage and Improve Existing Conveyance

The draft Plan states: "There are some exceptions. The State Water Resources Control Board has a formal process for granting water rights if the groundwater is classified as return flow of 'subterranean stream'." (P. 90, fn. 32)

Comment: It is unclear what is meant by "return flow." Therefore, State Water Board staff suggests the following modification:

There are some exceptions. The State Water Resources Control Board has a formal process for granting water rights if the groundwater is classified as ~~return flow of a~~ 'subterranean stream flowing in a known and definite channel.' (Wat. Code, § 1200.)

Sustainable Groundwater Management

WR R10: This recommendation states, in part: "If local or regional agencies fail to develop and implement these groundwater management plans, the State Water Board should take action to determine if the continued overuse of a groundwater basin constitutes a violation of the State's Constitution Article X, Section 2 prohibition on unreasonable use of water and whether a groundwater adjudication is needed to prevent the destruction of or irreparable injury to the

quality of the groundwater, consistent with Water Code Section sections 2100-2101.”
(P. 93, line 46; P. 94, lines 1-6)

Comment: In our comments on the fourth draft Plan, staff recommended that this discussion identify the steps that must be taken in order for the State Water Board to initiate a groundwater adjudication to protect the quality of groundwater. This information will assist the public in understanding that a groundwater adjudication initiated pursuant Water Code section 2100 et seq. has a particular focus—water quality—and a very specific process, which will help to avoid creating an expectation that this type of adjudication, by itself, may suffice to address all conditions of overdraft. At a minimum, this discussion should explain that before any action should be taken by the State Water Board, DWR or any governmental agency should submit to the State Water Board recommendations for the protection of groundwater quality. Therefore, State Water Board staff request that the Plan’s language be modified as follows:

If local or regional agencies fail to develop and implement these groundwater management plans, ~~the State Water Resources Control Board should~~ the Department of Water Resources, or any governmental agency who has conducted an investigation, may recommend to the SWRCB to take action to determine if the continued overuse of a groundwater basin constitutes a violation of the State’s Constitution Article X, Section 2 prohibition on unreasonable use of water or whether a groundwater adjudication is needed to prevent the destruction of or irreparable injury to the quality of the groundwater, consistent with Water Code Section sections 2100-2101. However, in the case of an adjudication, once the SWRCB receives a recommendation from DWR or an investigation has been conducted, several steps must be taken before the SWRCB may file or intervene in an action in superior court to restrict pumping, or impose physical solutions, or both, to protect groundwater quality, including: (1) noticing and holding a public hearing on the necessity for restricting groundwater pumping or for a physical solution; (2) determining whether the rights to the use of the groundwater must be adjudicated to protect the groundwater quality; (3) determining whether a local public agency overlying all or part of the basin groundwater will undertake the adjudication (if so, the State Water Board will take no further action); (Wat. Code, §§ 2100 - 2101.)

Water Code sections 2100-2101 do not allow for cost recovery. Therefore, the State Water Board would need to identify the overall resource needs associated with conducting groundwater adjudications for basins of various sizes and complexity and develop a budget change proposal to obtain the necessary resources. State Water Board staff requests that the Council provide a recommendation in the Delta Plan that additional resources should be made available for the State Water Board to accomplish this work.

Improved Reporting and Transparency

WR R11: This recommendation states that by January 1, 2014, DWR, in coordination with the SWRCB, and other agencies should create and maintain an integrated statewide data base water use monitoring system for water suppliers that export water from, transfer water through, or use water in the Delta watershed. (P. 96, lines 2-15)

Comment: Thank you for incorporating staff comments on the fourth draft Plan into the current draft. Staff has no further comments on this element at this time.

Improving Habitat

ER R1: This recommendation states, in part: "The Delta Stewardship Council acknowledges the importance of expediting habitat restoration in the Delta and its watershed and recommends the prioritization and implementation of habitat restoration projects in the following areas..." (P. 119, lines 7-14) and contains the following bulleted points:

- **"Suisun Marsh.** The largest wetland area on the west coast of the contiguous United States, Suisun Marsh has been mostly disconnected from the estuary. Restoring significant portions of Suisun Marsh provides..." (P. 119, lines 35-42)

Comment: The Plan should also mention that an additional benefit of habitat restoration in Suisun Marsh may be improved water quality. Suisun Marsh is identified on the Clean Water Act 303(d) list of water quality impaired water bodies for the following impairments: dissolved oxygen/organic enrichment, metals (mercury), nutrients and salinity. The prioritization of restoration projects should include an emphasis on potential for water quality improvement. Staff therefore recommends the following language:

Suisun Marsh. The largest wetland area on the west coast of the contiguous United States, Suisun Marsh has been mostly disconnected from the estuary. Restoring significant portions of Suisun Marsh provides the brackish portion of the estuary with sea level rise accommodation space, opportunities for extensive land-water interface dynamics, and compressed chemical and biological gradients that support productive and complex food webs to which native species are adapted. Suisun Marsh is identified on the Clean Water Act 303(d) list of water quality impaired water bodies for the following impairments: dissolved oxygen/organic enrichment, metals (mercury), nutrients and salinity. An additional benefit of habitat restoration in Suisun Marsh may be improved water quality. An ongoing restoration project is the Department of Water Resources' Blacklock Restoration Project. Projects in the planning stage include the Department of Fish and Game's Hill Slough Restoration Project. The prioritization of restoration projects should include an emphasis on potential for water quality improvement.

- **"Yolo Bypass.** Enhancing the ability of Yolo Bypass to be "activated" by higher-frequency, lower-magnitude flood levels provides more opportunity for migrating fish, especially Chinook salmon, to use this system as a migration corridor rich in refugia and food resources. Projects in the planning stage include fish passage improvements, and various approaches, such as notching the Fremont Weir, to increase the frequency and duration of inundation during times of year critical for spawning and rearing of native fish." (P. 120, lines 4-12)

Comment: A threshold issue concerning any project to flood Yolo Bypass is whether a water right permit, or change in a water right permit or license, is required to carry out the change. At this time, the State Water Board does not have sufficient information to ascertain whether the proposed project will involve the diversion and application of water to beneficial use requiring an appropriate water right in the first instance, or whether the project involves a change to an existing water right requiring a change petition. Therefore, State Water Board staff recommends that any project proponent send a letter to the State Water Board's Division of Water Rights describing the project and requesting a determination whether a water right is needed.

The State Water Board has water right permitting and licensing authority over post-1914 appropriative water surface diversions, as well as other responsibilities related to the administration of the State's water resources. An appropriative right involves the application of water to beneficial use. Thus, as part of its permitting functions, the State Water Board evaluates whether the water sought to be appropriated will be put to beneficial use. If the water will not be put to beneficial use, then a water right application is not required. For example, the use of water for recreation and preservation and enhancement of fish and wildlife resources is considered a beneficial use of water requiring a water right. (Wat. Code, § 1243; Cal. Code, Regs., tit. 23, 666.) Diversions for flood control, channel restoration, or other reasons not involving beneficial use do not. (See, e.g., Decision 130 (1926) at p. 6 [declining to consider portion of application for flood control purpose because it did not involve application of water to beneficial use].) In other words, the mere channelization, conveyance or other diversion for purposes not involving the beneficial use of water is not an activity for which a water right is required. Depending on how the project is developed, different approvals may be required from the State Water Board.

Additionally, State Water Board staff recommends that in implementing this project and similar habitat improvement projects, consideration should be given to the potential for the project to generate methylmercury. Mercury contamination results from the conversion of inorganic mercury (Hg) to toxic methylmercury (MeHg). When the Yolo Bypass is flooded, it becomes the dominant source of methylmercury to the Delta (Foe et al. 2008). Foe et al. 2008 recommends that studies be conducted to identify areas with large mercury deposits that may complicate downstream wetland restoration and increase methylmercury production. Careful selection of restoration projects may help minimize the extent of increased concentrations of methylmercury and mercury bioaccumulation in the food web.

Reducing Threats and Stresses

ER R7: This recommendation states, in part that the Delta Science Program, in conjunction with the SWRCB, and other relevant agencies and stakeholders, should conduct workshops to develop recommendations to the Delta Stewardship Council (by January 1, 2013) for measures to reduce stressor impacts on the Delta ecosystem... (P. 124, lines 25-34)

Comment: State Water Board staff agrees that such a process for gathering information is a good idea. Staff suggests that the Plan state that absent an augmentation of resources other high priority work may need to be discontinued to conduct and compile the recommendations from the workshops. This comment also applies to the related Administrative Performance Measure on page 127, lines 7-9.

Chapter 6: Improve Water Quality to Protect Human Health and the Environment

Table 6-1 (P. 135)

TMDLs Approved and Under Development in the Central Valley, Delta, and Suisun Bay

Comment: Thank you for updating the Plan to address staff comments on the fourth draft Plan so that Table 6-1 includes a reference to Suisun Marsh and the San Francisco Bay Board's development of TMDL(s) to address dissolved Oxygen/ Organic Enrichment and mercury in Suisun Marsh.

As mentioned in our comments on the fourth draft Plan, State Water Board staff recommend that Chapter 6 include a reference to the San Francisco Bay Water Board's role under the Clean Water Act, section 401 to issue water quality certifications and under Porter-Cologne (Water Code) to issue waste discharge requirements or waivers of waste discharge requirements for projects proposed in Suisun Marsh and Suisun Bay, including projects and federal actions that involve filling and dredging and physical alteration of habitat, including habitat restoration. There should be a water quality recommendation that states that project proponents of any actions that might potentially affect water quality or beneficial uses in Suisun Marsh should consult with the San Francisco Bay Water Board and obtain all necessary certifications or permits early in the process.

Drinking Water Quality

WQ R3: This recommendation states: "The SWRCB and/or Central Valley Regional Water Quality Control Board should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012." (P. 141, lines 15-18)

Comment: Thank you for updating the Plan to address staff comments on the fourth draft Plan. The State Water Board is coordinating this strategic workplan activity; staff therefore recommends that the language be modified to remove reference of the Central Valley Water Board as follows:

~~The SWRCB and/or Central Valley Regional Water Quality Control Board~~ should complete development of a Strategic Workplan for protection of groundwater beneficial uses, including groundwater use for drinking water, by December 31, 2012

WQ R4: This recommendation states: "The Department of Public Health, SWRCB, and Department of Water Resources should prioritize funding for small and disadvantaged communities that lack access to safe drinking water supplies or resources for adequate wastewater treatment." (P. 141, lines 19-21)

Comment: Although funding for small disadvantaged communities (SDACs) wastewater projects are generally a State Water Board priority, our policy does not explicitly give SDACs priority for funding. The State Water Board funds all eligible projects, in readiness to proceed order. However, the State Water Board does offer SDACs more affordable financing compared to others (i.e., principal forgiveness/grants, reduced interest rates, and extended financing terms). Therefore, State Water Board staff recommends the following modified language:

The Department of Public Health, SWRCB, and Department of Water Resources should prioritize funding or make financing more affordable for small and disadvantaged communities that lack access to safe drinking water supplies or resources for adequate wastewater treatment.

WQ R5: This recommendation states: "The SWRCB and Central Valley Regional Water Quality Control Board **should require** all recipient regions that are supplied water from the Delta or the Delta Watershed or discharge wastewater to the Delta or the Delta Watershed to participate in the CV-SALTS Program." (P. 141, lines 22-25)

Comment: As mentioned in staff comments on the fourth draft Plan, there may be instances where it is not appropriate for a water user or discharger to participate in CV-SALTS. Therefore, State Water Board staff recommends that the Plan's language be modified as follows:

The Water Boards should ~~require all recipient regions~~ consider requiring participation by all relevant water users that are supplied water from the Delta or the Delta Watershed or discharge wastewater to the Delta or the Delta Watershed in the CV-SALTS Program.

Environmental Water Quality

The unit of measure for ammonium concentrations is given in micrometers (μM).
(P. 142, lines 5 and 8)

Comment: The unit of measure should be micromol N/L (meaning micromoles of nitrogen per liter).

The draft Plan states, in part: "There is general concern that increased concentrations of methylmercury in water, sediment, and biota might result from restoration of wetland and floodplain habitats in the Bay-Delta..." (P. 146, lines 1-9)

Comment: State Water Board staff suggests adding the following statement to this paragraph:

Management practices and actions that contribute to reducing methylmercury production and loading would need to be determined and tested to support wetland restoration projects in the Delta and Suisun Marsh.

WQ R6: This recommendation states, in part: "The SWRCB and the San Francisco Bay and Central Valley Regional Water Quality Control Boards are currently engaged in regulatory processes, research, and monitoring essential to improving water quality in the Delta..." (P. 148, lines 22-27) and contains the following bulleted points:

- "The SWRCB and the San Francisco Bay and Central Valley Regional Water Quality Control Boards should develop and adopt objectives, either narrative or numeric, where appropriate, for nutrients in the Delta and Delta watershed by January 1, 2014."
(P. 148, lines 28-31)

Comment: As mentioned in our comments on the fourth draft Plan, State Water Board staff does not believe that adequate information or resources will be available to develop numeric objectives for the Delta by 2014. Rather, a workplan or research plan should be developed by 2017. Therefore, State Water Board staff recommends the following language:

The SWRCB and the San Francisco Bay and Central Valley Regional Water Quality Control Boards should develop a workplan and research plan for developing and adopting objectives, either narrative or numeric, where appropriate, for nutrients in the Delta and Delta watershed by January 1, 2014 2017.

- "The SWRCB and the San Francisco Bay and Central Valley Regional Water Quality Control Boards prioritize and accelerate the completion of the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for pyrethroids by January 1, 2016."
(P. 148, lines 35-38)

Comment: The San Francisco Bay Water Board is not involved in the Central Valley TMDL for pyrethroids. However, the San Francisco Bay Water Board has developed an Urban Creeks Pesticide TMDL that includes implementation actions to address pyrethroids. Therefore, reference to the San Francisco Bay Water Board should be removed and language from this recommendation should be modified as follows:

The SWRCB and the ~~San Francisco Bay and~~ Central Valley Regional Water Quality Control Boards should ~~prioritize and accelerate the complete~~ tion of the Central Valley Pesticide Total Maximum Daily Load and Basin Plan Amendment for pyrethroids by January 1, 2016.

- “The San Francisco Bay and Central Valley Regional Water Quality Control Boards have completed Total Maximum Daily Load and Basin Plan Amendments for selenium and methylmercury and efforts to support their implementation should be coordinated.” (P. 148, lines 39-41)

Comment: Thank you for updating the Plan to address staff comments on the fourth draft Plan. The San Francisco Bay Water Board has adopted a mercury TMDL for San Francisco Bay, including all Bay segments. The San Francisco Bay Water Board is currently working on a selenium TMDL for North San Francisco Bay, which includes the Central Bay, San Pablo Bay, Suisun Bay, Carquinez and the Delta segment within the San Francisco Bay Regional Water Board region.

The Central Valley Water Board adopted a methylmercury TMDL for the Delta in April 2010 and the State Water Board approved the TMDL at its June 21, 2011 meeting.

Therefore, State Water Board staff suggests the following clarifying language for this bullet point:

The San Francisco Bay Regional Water Board has adopted a mercury TMDL for San Francisco Bay, including all Bay segments and is currently working on a selenium TMDL for North San Francisco Bay. The Central Valley Regional Water Quality Control Boards have ~~has completed a TMDL and Basin Plan Amendments for selenium and methylmercury.~~ Efforts to support their implementation should be coordinated.

WQ R7: This recommendation states: “The SWRCB and Regional Water Quality Control Boards should work collaboratively with the Department of Water Resources, Department of Fish and Game, and other agencies and entities that monitor water quality in the Delta to develop and implement a Delta Regional Monitoring Program that will be responsible for coordinating monitoring efforts so Delta conditions can be efficiently assessed and reported on a regular basis.” (P. 149, lines 4-9)

Comment: As mentioned in our comments on the fourth draft Plan, State Water Board staff recommends including language to devote sufficient funding for this recommendation. The Water Boards plan to continue this effort as resources permit.

WQ R8: This recommendation states, in part: “The Central Valley Regional Water Quality Control Board, consistent with existing Water Quality Control Plan policies and water rights law, should require responsible entities that discharge wastewater treatment plant effluent or urban runoff to Delta waters to evaluate whether all or a portion of the discharge can be recycled,

otherwise used, or treated in order to reduce contaminant loads to the Delta by January 1, 2014." (P. 149, lines 10-14)

Comment: The Plan should note that it would require additional resources or redirection from other priority activities to fully implement this recommendation by January 1, 2014.

WQ R9: This recommendation states: "The SWRCB and Regional Water Quality Control Boards should conduct or require special studies of pollutants including selected emerging contaminants and causes of toxicity in Delta waters and sediments by January 1, 2014. (P. 149, lines 15-17)

Comment: As mentioned in staff comments on the fourth draft Plan, the State Water Board adopted sediment quality objectives in the Water Quality Control Plan for Enclosed Bays and Estuaries in April of 2011. To enable the State Water Board to continue and expand upon work related to toxicity in Delta waters and sediments, staff request that the Delta Plan include a recommendation for additional resources. Further, since the State Water Board is taking the lead on this activity, staff recommends the following modification:

~~The SWRCB and Regional Water Quality Control Boards~~ should conduct or require special studies of pollutants...

Administrative Performance Measures

- The draft Plan states: "Central Valley RWQCB and SWRCB adopt policies and regulations necessary to increase participation in CV-SALTS." (P. 150, lines 1-2)

Comment: Please see comments related to participation in CV-SALTS, as outlined in comments on WQ R5 above.

- The draft Plan states: "SWRCB and RWQCBs adopt objectives for nutrients in the Delta by January 1, 2014." (P. 150, line 7)

Comment: Please see comments related to adoption of nutrient objectives, as outlined in comments on WQ R6 above.

- The draft Plan states: "A Delta regional water quality monitoring program is developed and implemented within the first 5 years of the Delta Plan." (P. 150, lines 11-12)

Comment: Please see comments related to the development and implementation of a Delta Regional Monitoring Program, as outlined in comments on WQ R7 above.

Driver Performance measures

- The draft Plan states: "TMDLs for critical pesticides (for example, diazinon, chlorpyrifos, and pyrethroids) in the waters and sediments of the Delta are met by 2020." (P. 150, lines 18-19)

Comment: The only pesticide listings in the Delta for which TMDLs have not been completed are Chlordane, DDT and Dieldrin and pyrethroids. It is anticipated that development will soon begin on a pyrethroid TMDL.

- The draft Plan states: "Progress toward reducing concentrations of inorganic nutrients (ammonium, nitrate, and phosphate) in Delta waters over the next decade." (P. 150, lines 20-21)

Comment: As mentioned in staff comments on the fourth draft Plan, the main driver of nutrient concentrations in most of the Delta is the Sacramento Regional Wastewater Treatment Plant. When upgrades to the plant are completed in about 10 years, there will be a significant decrease in nutrient concentrations. It will be a step decrease rather than a trend. The Central Valley Water Board could take other actions, but none are likely to have as much of an effect as the plant upgrade. Therefore, staff recommends the following modification to this performance measure:

Progress toward reducing concentrations of inorganic nutrients (ammonium, nitrate, and phosphate) in Delta waters over the next two decades.

- The draft Plan states: "Routine annual surveys of selected emerging pollutants within the Delta are designed and implemented during the first 5 years of adoption of the Delta Plan." (P. 150, lines 22-23)

Comment: As mentioned in staff comments on the fourth draft Plan, the Plan should clarify who will be implementing these routine annual surveys. If the Water Boards are responsible for this work, the Plan should also recommend that additional resources be made available for this activity. Therefore, staff recommends the following modification:

The State and Regional Boards shall insure that Routine annual surveys of selected emerging pollutants within the Delta are designed and implemented during the first 5 years of adoption of the Delta Plan.

Outcome Performance Measures

- The draft Plan states: "Trends in body loads of mercury and selenium in top predatory fish in the Delta will be downward over the next decade." (P. 150, lines 26-27)

Comment: As mentioned in staff comments on the fourth draft Plan, there will not likely be measurable decreases in mercury in the next ten years. The Central Valley Water Board's mercury control program for the Delta includes a seven-year study period. During this study period, the goal of the control program is to prevent existing mercury loads from increasing. One significant source of mercury loads from the Stockton Wastewater Treatment Plant has recently been reduced and it is expected that further significant reductions will result from upgrades to the Sacramento Regional Wastewater Treatment Plant in the next ten years. However, at the same time, State Water Board staff is concerned that increased wetland development will increase mercury loads. In addition, mercury in fish in the Delta could change dramatically if there are significant changes in how water is managed in and around the Delta. As a result, State Water Board staff suggests that the ten-year performance measure be modified to instead say that fish tissue concentrations of mercury should not increase within the next ten years and should decrease by 2035.

Therefore, State Water Board staff suggests the following modified language:

Trends in body loads of ~~mercury and~~ selenium in top predatory fish in the Delta will be downward over the next decade. Fish tissue concentrations of mercury should not increase within the next ten years and should decrease by 2035. The Central Valley Regional Board should require all parties that discharge methyl and total mercury to conduct studies by 2018 to develop best management practices (BMPs) to reduce loads and implement the BMPs by 2020.

- The draft Plan states: "Trends in the occurrence of spring diatom blooms in Suisun Bay and Suisun Marsh will be upward." (P. 150, lines 28-29)

Comment: As mentioned in our comments on the fourth draft Plan, staff agrees that increased frequency of spring diatom blooms in Suisun Bay is a good outcome performance measure, however the suite of management actions necessary to achieve this outcome still need to be identified. There is no information to support a performance recommendation of increased trends in diatom blooms for Suisun Marsh.

- The draft Plan states: "Harmful algal blooms (HABs) will lessen in severity and spatial coverage in the Delta over the next decade." (P. 150, lines 32-33)

Comment: As mentioned in our comments on the fourth draft Plan, staff does not believe that sufficient information is available to support this statement and thereby recommend the following change:

~~Harmful algal blooms (HABs) will~~ The State and Regional Water Boards should work with researchers to develop and initiate implementation of a study plan by January 2013 to determine how to lessen the severity and spatial coverage of harmful algal blooms in the Delta.

The Water Boards appreciate the opportunity to provide comments concerning the fifth draft Plan. If you have any questions concerning these comments or would like to discuss any other issues associated with the Delta Plan, please contact me at (916) 341-5428 or lgrober@waterboards.ca.gov.

Sincerely,



For Leslie F. Grober, Assistant Deputy Director
Division of Water Rights